

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

LUCILO CABRERA,

Petitioner,

v.

CIVIL ACTION NO. 5:23-cv-00459

K. HECKARD, Warden,

Respondent.

ORDER

Pending is Petitioner Lucilo Cabrera's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, filed June 28, 2023. This action was previously referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Eifert filed her PF&R on June 7, 2024. Magistrate Judge Eifert recommended that the Court grant, on other grounds¹, Respondent's motion to dismiss, deny Mr. Cabrera's Section 2241 Petition, and dismiss this matter.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*" (emphasis added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's

¹Respondent asserted dismissal of Mr. Cabrera's Petition was proper for lack of jurisdiction inasmuch as his claim to any First Step Act ("FSA") time credits would be unripe. Magistrate Judge Eifert, however, recommended dismissal of the Petition on the merits given Mr. Cabrera's offense of conviction renders him statutorily ineligible to receive FSA time credits.

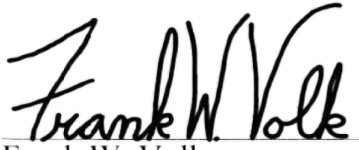
right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically “appeal a magistrate judge’s findings that were not objected to below, as § 636(b) doesn’t require de novo review absent objection.”); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on June 24, 2024. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [**Doc. 10**], **GRANTS**, on other grounds, Respondent’s Motion to Dismiss [**Doc. 8**], **DENIES** Mr. Cabrera’s Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 [**Doc. 1**], and **DISMISSES** this matter.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: July 8, 2024




Frank W. Volk
United States District Judge